



A handwritten signature in black ink, reading "Michael S. McManus", is positioned above the judge's name.

Hon. Michael S. McManus  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re	)	Case No. 09-52063
LISA and STEVEN MARQUEZ,	)	Chapter 13
Debtor.	)	Date: November 13, 2009
	)	Time: 1:30 p.m.
	)	

**MEMORANDUM**

Movant The Bank of New York, etc., seeks relief from the automatic stay with respect to real property located in Reno, Nevada.

Neither the debtor nor the trustee have filed written opposition within 15 days after service of the motion as required by Local Bankruptcy Rule 9014(d)(1). This is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo),

1 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the  
2 above-mentioned parties in interest are entered and the matter  
3 will be resolved without oral argument.

4 The motion will be granted pursuant to 11 U.S.C. § 362(d)(1)  
5 to permit the movant to conduct a nonjudicial foreclosure sale  
6 and to obtain possession of the subject property following sale.

7 The movant holds a claim secured by a deed of trust that  
8 encumbers the debtor's real property. The plan provides for the  
9 payment of this claim directly by debtor. However, despite the  
10 passage of approximately five months, the plan is not confirmed  
11 and the direct payments to the movant are three months in  
12 arrears.

13 Given the inability to confirm a plan despite sufficient  
14 time to do so, the lack of payments to the movant, and the  
15 debtor's minimal equity in the property, the court concludes that  
16 there is cause for relief from the automatic stay.

17 The loan documentation contains an attorney's fee provision  
18 and the movant is an over-secured creditor. The motion demands  
19 payment of fees and costs. The court concludes that a similarly  
20 situated creditor would have filed this motion. Under these  
21 circumstances, the movant is entitled to recover reasonable fees  
22 and costs incurred in connection with prosecuting this motion.

23 See 11 U.S.C. § 506(b). See also Kord Enterprises II v.  
24 California Commerce Bank (In re Kord Enterprises II), 139 F.3d  
25 684, 689 (9<sup>th</sup> Cir. 1998).

26 Therefore, the movant shall file and serve a separate motion  
27 seeking an award of fees and costs. The motion for fees and  
28 costs must be filed and served no later than 14 days after the

1 conclusion of the hearing on the underlying motion. If not filed  
2 and served within this deadline, or if the movant does not intend  
3 to seek fees and costs, the court denies all fees and costs. The  
4 order granting the underlying motion shall provide that fees and  
5 costs are denied. If denied, the movant and its agents are  
6 barred in all events and circumstances, in connection with this  
7 bankruptcy case or otherwise, from recovering any fees and costs  
8 incurred in connection with the prosecution of the motion.

9 If a motion for fees and costs is filed, it shall be set for  
10 hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2).  
11 It shall be served on the debtor, the debtor's attorney, the  
12 trustee, and the United States Trustee. Any motion shall be  
13 supported by a declaration explaining the work performed in  
14 connection with the motion, the name of the person performing the  
15 services and a brief description of that person's relevant  
16 professional background, the amount of time billed for the work,  
17 the rate charged, and the costs incurred. If fees or costs are  
18 being shared, split, or otherwise paid to any person who is not a  
19 member, partner, or regular associate of counsel of record for  
20 the movant, the declaration shall identify those person(s) and  
21 disclose the terms of the arrangement with them.

22 Alternatively, if the debtor will stipulate to an award of  
23 fees and costs not to exceed \$750, the court will award such  
24 amount. The stipulation of the debtor may be indicated by the  
25 debtor's signature, or the debtor's attorney's signature, on the  
26 order granting the motion and providing for an award of \$750.

27 The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be  
28 waived.

Counsel for the movant shall lodge a conforming order.